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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,025	05/19/2006	Gabriele Rampini	290675US0PCT	7542

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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AHVAZI, BIJAN

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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02/25/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/580,025	<b>Applicant(s)</b> RAMPINI ET AL.	
	<b>Examiner</b> BIJAN AHVAZI	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on December 14, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14 and 17-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14 and 17-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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### DETAILED ACTION

1. This action is responsive to the amendment filed on December 14, 2009.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 29, 2009 has been entered.
3. Applicant's election of **Group II**, claims 17-20 with traverse in the reply filed on 12/14/2009 is acknowledged. The traversal is on the ground(s) that there is no added burden on the examiner to also search claims 11-14, 21-24, and 25-28. This is found persuasive and thus the restriction requirement as set forth in the Office action mailed on 11/18/2009 is withdrawn.
4. Claims 11-14, 17-20, 21-24, and 25-28 are pending. Claims 15 and 16 are cancelled. Claims 17-28 are newly added.
5. The rejection of claims 11-16 in the last Office action is withdrawn in view of the Applicants' amendment.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided

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the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 11-14, 17-20, 21-28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. (US 11/418253) in view of Nakajima *et al.* (GB 1,537,436). Although the preambles are different, and the conflicting claims are not identical; they are not patentably distinct from each other because the present claims indicated above also cover compositions which overlap with the claims of the copending applications above, and thus, render the present claims ***prima facie*** obvious. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provide the process for preparing the fluid dispensing container with low-boiling liquid by Nakajima *et al.* with the pump enabling a fluid dispensing as taught by the copending Application in order to avoid the risk of explosion which is substantially eliminated, since the pressure-resistant structure is unnecessary. Furthermore since the air-tight vessel is employed, a volatile content can be filled, and the spraying device can be used in the same manner as an aerosol-type spraying device and a similar spraying effect or condition can be attained, and the spraying operation is assisted by mechanical pressing means, the amount of the pressurized gas to be used can be remarkably reduced.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

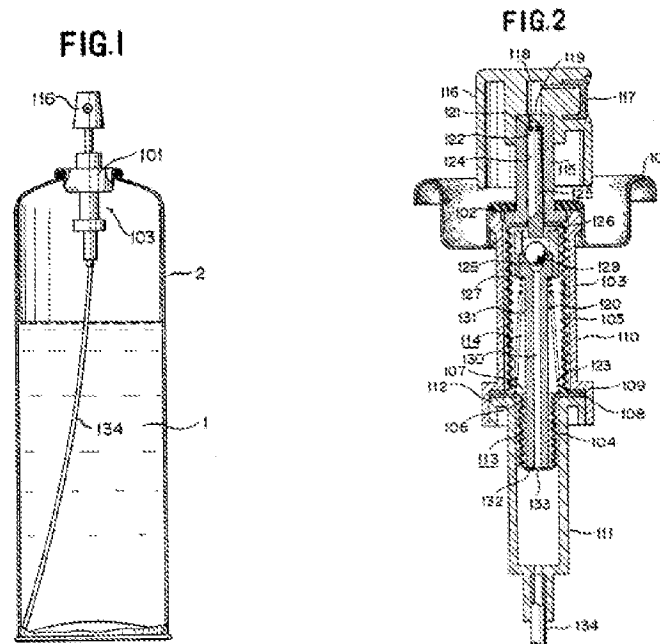
8. Claims 17-19, 21-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakajima *et al.* (GB 1,537,436).

Regarding claims 17-19, 21-23, and 25-27, Nakajima *et al.* disclose a fluid dispensing container such as spraying device comprising such air-tight vessel, in which a low pressure gas is preliminarily filled so as to facilitate maintenance of a low pressure in the atmosphere in the interior of the air-tight vessel (Page 1, lines 28-30). Referring now to Figures 1 and 2 a mounting cap 101 is air-tightly fixed to the opening of an air-tight vessel 2 filled with a pressurized gas of a low pressure of up to 2 Kg/cm<sup>2</sup> as measured at 33°C and a material 1 to be ejected, and a housing 103 is fixed to the inner face of the mounting cap 101 through a gasket 102 (Page 2, lines 22-25). A push button 116 is fixed to the upper end of the stem 115, and a nozzle 117 is disposed on one outer side face of the push button 116 and a conduit 118 communicated with the nozzle 117 is connected to a content-ejecting opening 119 of the stem 115 (Page 2, lines 35-38).

Accordingly, the content (the gas at the initial operation) stored in the pressurizing compartment 114 and pressure-receiving compartment 113 is sprayed out from the nozzle 117 of the push button 116 by the accumulated pressurizing force (Page 3, lines 1-4). Various materials to be ejected and pressurized gases, as shown in Table 1 (Page 5, lines 1-55) such as isopentane in the amount of 10.0 % by weight having pressure in air-tight vessel of 1.9

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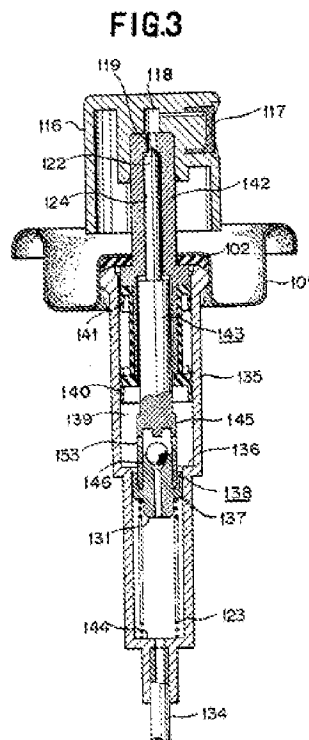
Kg/cm<sup>2</sup> at 100° F (37.78 °C) are filled in an air-tight vessel as hair conditioner shown in Figure 3.



Nakajima *et al.* also disclose a process for preparing the fluid dispensing container such as spraying device comprising an air-tight vessel supporting a finger actuated piston pump for dispensing the contents of the vessel in which a liquid or other material to be ejected and a pressurized gas are filled as the contents in the air-tight vessel and in which the pressure in the air-tight vessel is maintained at a low level such that the contents cannot be dispensed merely by the ejecting pressure of the contents per se (Page 6, lines 18-22), wherein a housing is formed in said air-tight vessel, and a pressure-receiving compartment having a pressure-receiving piston disposed therein and a pressurizing compartment are formed in succession in said housing (Page 6, lines 26-28). Accordingly, the content (the gas at the initial operation) stored in the pressurizing compartment 114 and pressure-receiving compartment 113 is

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sprayed out from the nozzle 117 of the push button 116 by the accumulated pressurizing force (Page 3, lines 1-4). Various materials to be ejected and pressurized gases, as shown in Table 1 (Page 5, lines 1-55) such as isopentane in the amount of 10.0 % by weight having pressure in air-tight vessel of 1.9 Kg/cm<sup>2</sup> at 100° F (37.78 °C) are filled in an air-tight vessel as hair conditioner shown in Figure 3.



The process for preparing the fluid dispensing container of Nakajima *et al.* would inherently possess the recited limitation because same ingredients and condition are utilized. Nakajima *et al.* teach all the limitations of the instant claims such as the process for preparing the fluid dispensing container and the fluid dispensing container. Therefore claims are as being 17-19, 21-23, and 25-27 anticipated by Nakajima *et al.*

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### ***Response to Arguments***

9. Applicant's arguments filed on 09/29/2009 have been fully considered but they are not persuasive.

The rejection of independent claim 13 is withdrawn in view of the applicant amendment wherein the claim recites a new limitation whereby the fluid dispensing container "**does not comprise a pressurized gas**". However, regarding the newly added claims 17, 21, 25, the applicants have not introduced the recited limitation as claim 13 wherein the fluid dispensing container "**does not comprise a pressurized gas**". The applicants are invited to amend the claims 17, 21 and 25 by introducing the same limitation as in claim 13.

### ***Examiner Information***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijan Ahvazi, Ph.D. whose telephone number is (571)270-3449. The examiner can normally be reached on M-F 8:0-5:0. (Off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from



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/BA/  
Bijan Ahvazi  
Examiner  
Art Unit 1796

/Harold Y Pyon/  
Supervisory Patent Examiner, Art Unit 1796

01/18/2010